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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT HAEUSER,

Defendant.

Case No.: CR 22-00181 SI

**SECOND SUPPLEMENTAL
SENTENCING MEMORANDUM**

1 Defendant Robert Haeuser respectfully provides this supplemental submission to (1)
2 provide the Court with the requested psychological report, attached hereto as Exhibit A (under
3 seal), authored by Dr. Kathleen Longwell, Ph.D.; (2) identify a recent sentencing case that further
4 supports Mr. Haeuser's request for the mandatory minimum of 60 months; and (3) object to the
5 conditions of supervised release proposed by U.S. Probation, in view of Dr. Longwell's report
6 and propose alternative conditions instead.

7 *First*, attached is the psychological evaluation requested by the Court. In summary, it
8 reflects that Mr. Haeuser is at "very low risk" for reoffending, provides an analysis of his
9 background, health, and the offense conduct, and makes recommendations for effective care and
10 treatment of Mr. Haeuser. *See Rizk Decl., Ex. A at 13* ("empirical data indicates that Mr.
11 Haeuser is at a very low risk of committing any type of sexual offense in the future even if he
12 receives no prison time or sex offender treatment."). Significantly, she also finds that as to the
13 mandatory minimum five year sentence: "A longer sentence would be counterproductive and
14 further handicap his finding employment and developing healthy relationships with others." *Id.*

15 *Second*, in addition to the cases cited by the defense previously (Dkt. No. 65), Mr.
16 Haeuser urges the Court to consider *United States v. Nunez*, Case No. 21-CR-13 CRB, a case that
17 was also handled by the same assigned Assistant United States Attorney. According to the
18 government's sentencing memorandum (Dkt. No. 88), Mr. Nunez was convicted of possessing at
19 least 5 videos and 22 images of minors engaged in sexually explicit conduct. Notably, Mr.
20 Haeuser possessed contraband consisting of 4 videos and 29 images. While it is true that Mr.
21 Haeuser is responsible for soliciting the material in this case, Mr. Nunez obtained at least some
22 of the materials directly from an acquaintance who took a video of himself anally sodomizing a
23 minor victim and then sent it to Mr. Nunez. The government asked for a sentence of 37 months
24 in Mr. Nunez's case, and the Court instead sentenced him to a year and one day. *Nunez* therefore
25 supports the defense's sentencing recommendation in this case, to the extent the Court must be
26 mindful of "the need to avoid unwarranted sentence disparities among defendants with similar
27 records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6).
28

1 *Third*, and finally, the defense raises objections to U.S. Probation’s proposed conditions
 2 disclosed in the Final Presentence Report (PSR). Both the *term* of supervised release and the
 3 *conditions* of supervised release must comply with the requirements of 18 U.S.C. § 3583(d). That
 4 is, they must (1) be “reasonably related” to the nature and circumstances of the offense, the
 5 history and characteristics of the defendant, and the statutory goals of deterrence, protection of
 6 the public, and rehabilitation; (2) involve “no greater deprivation of liberty than is reasonably
 7 necessary” to achieve those purposes; and (3) accord with any pertinent Sentencing Commission
 8 policy statements. 18 U.S.C. § 3583(d).

9 Notably, the *only* special conditions that the U.S. Sentencing Commission identifies for
 10 consideration by the Court in sex offenses are the following:

- 11 (A) A condition requiring the defendant to participate in a program approved by the United
 States Probation Office for the treatment and monitoring of sex offenders.
- 12 (B) A condition limiting the use of a computer or an interactive computer service in cases
 13 in which the defendant used such items.
- 14 (C) A condition requiring the defendant to submit to a search, at any time, with or without a
 15 warrant, and by any law enforcement or probation officer, of the defendant’s person and
 16 any property, house, residence, vehicle, papers, computer, other electronic communication
 or data storage devices or media, and effects upon reasonable suspicion concerning a
 violation of a condition of supervised release or unlawful conduct by the defendant, or by
 any probation officer in the lawful discharge of the officer’s supervision functions.

17 *See* U.S.S.G. § 5D1.3(d)(7); *United States v. Weber*, 451 F.3d 552, 557-58 (9th Cir. 2006).

18 Under Judicial Conference policy, probation officers are required to consider
 19 recommending a special condition only if the officer determines that the mandatory and standard
 20 conditions do not adequately address the defendant’s risks and needs.¹ Although it is
 21 unfortunately routine in this district for U.S. Probation to propose the exact same extremely
 22 restrictive set of special conditions in virtually every single sex offense case, regardless of the
 23 particularities of the defendant and the case, judicial policy dictates that probation officers
 24 “should avoid presumptions or the use of set packages of conditions for groups of offenders and
 25 keep in mind that the purposes vary depending on the type of supervision.”² Officers “should ask
 26 first whether the circumstances in *this* case require such a deprivation of liberty or property to
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28 ¹ Guide to Judiciary Policy (“Guide”), vol. 8E, § 620.60(b).

² *Id.*, vol. 8D, §§ 240(d) & 530.20.30(b).

1 accomplish the relevant sentencing purposes at *this* time.”³ Good supervision is “tailored to the
 2 risks, needs, and strengths presented by the individual offender as determined by careful
 3 assessment of each case.”⁴ And, for defendants facing lengthy terms of imprisonment, the officer
 4 should consider whether the risks and needs present at the time of sentencing will be present
 5 when the defendant returns to the community.⁵

6 “The government bears the burden of establishing the necessity of any condition of
 7 supervised release,” as well as its term. *United States v. Wolf Child*, 699 F.3d 1082, 1090 (9th
 8 Cir. 2012) (citing *United States v. Weber*, 451 F.3d 552, 558 (9th Cir. 2006)). The Ninth Circuit,
 9 following other Circuits, has found that it is an abuse of discretion for the district court to impose
 10 conditions, such as restrictions on access to computer devices and the Internet, where the district
 11 court fails to articulate any specific reasons for its decision. *See, e.g., United States v. Lamere*,
 12 373 Fed. App’x 669, 673 (9th Cir. 2009) (unpublished); *United States v. Goodwin*, 717 F.3d 511,
 13 523-24 (7th Cir. 2013) (Posner, J.) (vacating severe restrictions because “the district court has not
 14 provided any explanation of how this condition is reasonably related”); *United States v. Dunn*,
 15 777 F.3d 1171 (10th Cir. 2015); *United States v. Malenya*, 736 F.3d 554 (D.C. Cir. 2013); *United*
 16 *States v. Dotson*, 715 F.3d 576 (6th Cir. 2013).

17 First, not unlike the government’s and U.S. Probation’s excessive sentencing
 18 recommendations of 10 and 15 years in custody, respectively, their suggestion that he should
 19 serve 15 years of supervised release is also plainly excessive. As with the conditions, under 18
 20 U.S.C. § 3583(d)(2), the term of supervision must “involve[] no greater deprivation of liberty
 21 than is reasonably necessary.” The government does not come close to carrying its burden to
 22 justify 15 years of supervision. *Wolf Child*, 699 F.3d at 1090. Here, a term of five years is
 23 adequate, given that: (1) Mr. Haueser is a “very low risk” defendant, (2) who has no criminal
 24 history, (3) there is no evidence of other similar offenses or any general sexual interest in
 25 children, (4) Dr. Longwell opines that he would be very unlikely to offend even in the absence of
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27 ³ *Id.* §§ 240(d), 530.20.30(b) (emphasis in original).

28 ⁴ *Id.*, vol. 8E, § 170(a).

⁵ *Id.*, vol. 8D, § 530.20.30(b).

1 a sentence and treatment, and (5) he has been perfectly compliant with draconian device and
 2 location monitoring requirements during the year and a half this case has been pending. The *only*
 3 justification for such a long period of supervision offered by U.S. Probation is the following:
 4 “The lengthy term of supervised release is based on Mr. Haeuser’s conduct in this case and the
 5 need for support during his rehabilitation.” PSR (Recommendation) at 3. Needless to say, that
 6 purported justification falls far short. The evidentiary record and Dr. Longwell’s report clearly
 7 show that the offense conduct was an isolated incident, and “the need for support during his
 8 rehabilitation” exists in every single case. U.S. Probation’s positions do not countenance either
 9 point. It is unfortunately quite obvious that neither the government nor U.S. Probation has not
 10 made well-informed recommendations based on the individual facts and circumstances of Mr.
 11 Haeuser’s case.

12 Attached hereto are the supervised release conditions proposed by the defense for Mr.
 13 Haeuser. Rizk Decl., Ex. B & C. Exhibit B is a redline⁶ of probation’s proposed conditions with
 14 justifications and Exhibit C is a clean copy for the Court’s convenience, should it elect to adopt
 15 the defense’s proposals. Notably, the conditions proposed by U.S. Probation far exceed the
 16 conditions identified as potentially appropriate in sex offense cases by the Sentencing
 17 Commission and are not supported by a number of Dr. Longwell’s conclusions. The defense’s
 18 proposals do not and are supported by Dr. Longwell’s report. They are also supported by the
 19 justifications in Exhibit B, which were informed by meeting and conferring with representatives
 20 from U.S. Probation in another sex offense matter. A few further observations are warranted as to
 21 the particular conditions:

22 As to Special Conditions Nos. 7-11, pertaining to Mr. Haeuser’s access to computer
 23 devices and the Internet: consistent with the Sentencing Commission’s guidance and given the
 24 circumstances of the offense, the defense supports computer monitoring conditions. That said,
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26
 27 ⁶ In Exhibit B, red language has been added, whereas language that is struck has been deleted.
 28 The numbered conditions also track the numbering of the special conditions in the PSR. Note
 that Special Condition No. 11 in the PSR is duplicative of the last sentence of Special Condition
 No. 9.

1 Mr. Haeuser is an engineer by training and of course employment will be an important
2 component of his rehabilitation when he is released. As Dr. Longwell points out, his offense and
3 registration “will make it more difficult for him to launch his career in engineering.” Rizk Decl.,
4 Ex. A at 13. In her professional opinion, especially given that he is “very low risk,” “[i]t is in the
5 best interest of Mr. Haeuser’s rehabilitation and public safety to limit restrictions on his use of
6 the Internet while on probation to prohibiting contact with minors or viewing pornography
7 involving under aged persons of which he is already committed to doing.” *Id.* That is so because
8 overly restrictive conditions would be *counterproductive* to Mr. Haeuser’s rehabilitation and risk
9 isolating him in an unhelpful way that could actually jeopardize public safety.

10 The conditions as drafted by U.S. Probation must be revised to pass legal muster. Special
11 Conditions Nos. 7 and 9, in particular, run afoul of *United States v. Lacoste*, 821 F.3d 1187, 1191
12 (9th Cir. 2016), since they are overbroad. No party is seriously contending that a complete ban on
13 any possession of devices or any access to the Internet is appropriate in this case. Nevertheless, a
14 ban on devices and access to the Internet is how conditions Nos. 7 and 9 are drafted. Committing
15 discretion to U.S. Probation to make exceptions to the ban cannot save an overbroad restriction
16 for the very reasons explained in *Lacoste* and noted in the justifications in Exhibit B.

17 Finally, such a ban would be wholly inappropriate given the unusual circumstances of
18 this case: namely, that Mr. Haeuser committed the offense approximately five years ago, there is
19 no evidence on any of his devices that he has ever offended in any other way before or
20 afterwards, and he is not a pedophile and does not have any sexual interest in children, according
21 to Dr. Longwell. Notably, Mr. Haueser has also already been on computer monitoring conditions
22 for approximately a year and a half while this case has been pending and he has had no
23 violations—the strongest indication available that greater restrictions are not necessary.

24 As to Special Condition No. 8, the defense’s proposal is a technical amendment addressed
25 to the version of the way U.S. Probation’s Computer & Internet Management & Monitoring
26 Program (CIMP) Agreement is implemented. In a meet and confer recently in another matter
27 (*U.S. v. Palacios*), supervisors from U.S. Probation indicated that the protocol this proposed
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1 condition describes will be their practice from now on. Therefore, there should be no objection to
2 the proposed change formalizing the improvements to the process.

3 As to Special Condition Nos. 10 and 11, these changes are directed at limiting U.S.
4 Probation's intrusion into Mr. Haeuser's computer devices and software, especially as concerns
5 employment, while preserving their access to the extent needed to verify that he is complying
6 with the monitoring requirements and not access contraband. The defense urges the Court to
7 adopt these modifications for the justifications set forth in Exhibit B.

8 As to Special Conditions No. 13, the restriction on access to adult pornography, the
9 condition, as drafted, directly violates *United States v. Gnirke*, 775 F.3d 1155 (9th Cir. 2015),
10 which is also addressed to the definition in 18 U.S.C. § 2256(2). In any case, U.S. Probation
11 recently committed not to ask for this particular condition at sentencing, absent a supporting
12 psychological evaluation. *See* Rizk Decl., Ex. D (letter from U.S. Probation). Indeed, this is also
13 what the law requires. *See United States v. Canfield*, 893 F.3d 491 (7th Cir. 2018) (pornography
14 restriction that impinges on defendant's First Amendment rights requires a record that reflects
15 individualized findings specific to the defendant); *United States v. Castellano*, --- F.4th ---, 2023
16 WL 2056029, at *4-6 (4th Cir. Feb. 17, 2023) (same); *see also United States v. Voelker*, 489 F.3d
17 139, 151 (3d Cir. 2007). The probation officer's suggestion in the PSR that the condition could
18 be modified "after a comprehensive evaluation" is thus exactly backwards. Accordingly, the
19 defense expects U.S. Probation will rescind its request for Special Condition No. 13.

20 On the merits, the condition is clearly unwarranted in this case. Mr. Haeuser is not
21 addicted to pornography, and there is no evidence that accessing pornography has ever interfered
22 with his daily activities or well-being. There was no evidence he has downloaded child
23 pornography from other sources ever and no collection of pornography was found when he was
24 arrested, although the government seized and searched all his devices. Finally, Dr. Longwell
25 specifically opines that the restriction is not appropriate in Mr. Haeuser's case: "It will not be in
26 his best interest or in the interest of protecting the community to ban him from viewing non-
27 deviant pornography involving persons over the age of 18." Rizk Decl., Ex. A at 13.
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1 Third, as to Special Condition No. 18, it serves no purpose and should not be imposed.
2 The suggestion in the PSR that this condition is “mandatory pursuant to state law” is misleading.
3 Registering as a sex offender is required already by state and/or federal law, irrespective of any
4 supervision requirement. Given that Mr. Haeuser will be under those legal requirements any way,
5 there is no point in including it as a condition. The condition requiring him to notify U.S.
6 Probation is also pointless. In a recent meet and confer in *Palacios*, supervisors from probation
7 acknowledged that, as a federal law enforcement agency, their officers are *already* notified
8 electronically whenever a supervisee updates their registration. Accordingly, Special Condition
9 No. 18 fails the statutory requirement that the supervision conditions must constitute “no greater
10 deprivation of liberty than is reasonably necessary” under 18 U.S.C. § 3583(d)(2).

11 ***

12 For all these reasons, the defense respectfully requests a sentence of five years in custody,
13 followed by five years of supervised release with the conditions discussed herein.
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19 Respectfully submitted,

20 Dated: May 26, 2023

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23 Northern District of California

24 /S

25 _____
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